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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re DYLAN M. et al., Persons Coming
Under the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

ANGELA P. et al.,

Defendants and Appellants.

G041042 (cons. with G041229)

(Super. Ct. Nos. DP008793,
DP008794 & DP013129)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James
Marion, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for
Defendant and Appellant, Angela P.

Kazoua Cha, under appointment by the Court of Appeal, for Defendant and Appellant, Daniel T.

Benjamin P. de Mayo, County Counsel, and Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Plaintiff and Respondent.

* * *

Angela P. appeals from the termination of her parental rights to her three children, Dylan G., Lana T., and Daniel T., Jr. Daniel T., Sr., also appeals from the termination of his parental rights to Lana and Daniel Jr.¹ They both claim the juvenile court should have refused to terminate parental rights because they maintained regular contact with the children and those relationships outweigh the benefits of adoption. Angela also contends the juvenile court denied her right to due process by denying her request for a continuance of the permanent plan selection hearing. We find no error and affirm.

FACTS

Two-year-old Dylan and four-month-old Lana were first detained by the Orange County Social Services Agency (SSA) and adjudicated dependents of the juvenile court in July 2003. The mother and father had been arrested and incarcerated for counterfeiting and forgery charges, child endangerment charges, and drug related charges. Both parents had “extensive” histor[ies] of substance abuse. The children were placed with their maternal great-aunt and uncle, Judy and Herb R.

The parents were released from jail and participated in their reunification plans. At the 18-month review hearing in January 2005, the children were returned to the parents under a plan of family maintenance. However, the parents struggled with relapses, missed drug tests, and sporadic attendance at Narcotics Anonymous. In early December 2005, the mother was arrested and incarcerated for violating the terms of her

¹ Dylan’s alleged father does not appeal.

probation. Two weeks later, while incarcerated, she gave birth to Daniel Jr. The father took all three children to stay with Judy and Herb because he could not care for them and work full-time. He visited them every other weekend.

SSA re-detained Dylan and Lana in February 2006 and filed a dependency petition on behalf of Daniel Jr. in March 2006. Reunification services were denied for Dylan and Lana but were offered for Daniel Jr. By November 2006, the parents were employed, compliant with substance abuse treatment and testing, and visiting all three children regularly. The visits went well. The juvenile court held a permanent plan selection hearing for Dylan and Lana on November 15. Pursuant to the stipulation of all parties, the court found termination of parental rights would be detrimental to the children and appointed Judy and Herb as their legal guardians. Six more months of reunification services were ordered on Daniel Jr.'s case.

By July 2007, the visits had been increased to overnights, then weekends, and Dylan and Lana “expressed a strong desire to go live with their mother and father and have conveyed this in different ways.” On July 12, all three children began a trial visit with the parents. “From the start of the Trial Return Visit, the family experienced numerous challenges and difficulties, including marital stress, financial hardship, uncertainty of their housing situation, lack of childcare [and] concerns regarding care and supervision.” The parents failed to submit to drug testing, and the father lost his driver’s license. Ten weeks later, in September 2007, the trial visit was terminated and the children went back to Judy and Herb.

In October 2007, the juvenile court terminated reunification services for Daniel Jr. and set a permanent plan selection hearing for February 2008. The hearing was continued, however, and in April, Judy and Herb expressed a desire to adopt all three children. In May 2008, SSA opined that guardianship was no longer an appropriate permanent plan for Dylan and Lana and recommended a new permanent plan selection

hearing for them. The juvenile court followed the recommendations and set a permanent plan selection hearing for August 2008. Daniel Jr.'s permanent plan selection hearing was continued to coincide with the one for Dylan and Lana.

The permanent plan selection hearing began on October 2, 2008. SSA submitted reports written in August and September. The social worker reported the visits between the children and the parents were positive. The visitation monitor observed: "The children are consistently excited to go on the visit and run into the car and help to get ready to go. . . . All three run to their parents and hug them upon arrival" The parents reciprocate the affection." The parents were consistently well prepared for the visits, bringing toys and food, and worked well together to provide supervision. "The parents take a parental role in the direction of the children during the visit, they educate on play rules and how to play, educate on safety issues and redirect as needed. Both parents follow through with direction for each child despite the child's arguments." But the social worker reported the children wanted to live with Judy and Herb. She had repeatedly asked the two older children where he or she wanted to live. "Each time Dylan and Lana stated . . . they wanted to continue living with the caretakers, not the parents. The children consistently gave this response, whether they were in the home of the caretakers or on a monitored visit with their parents."

The mother emailed the social worker that she was starting a new job as a rehabilitation counselor on September 14. She also reported she had left the father because they were not getting along, but both parents attended the visit with the children on September 14. From May 23 to September 21, the social worker was unable to contact the parents by telephone. In late September, however, the mother obtained a drug patch and the father began random drug testing again. The father told the social worker "both he and his wife are concerned and want to show the Court that they are living a

drug-free life so that they can get their children back.” Neither parent was able to provide the social worker with an address where they lived.

The social worker recommended adoption as the permanent plan for all three children. “Although the parents have maintained regular contact with the children during the course of dependency, they have failed to maintain the needed stability in their own lives and demonstrate that they are able to maintain the stability and permanency that the children deserve and need. [¶] The children’s parents have squandered numerous opportunities to have the children in their care on a permanent basis.”

At the outset of the hearing, the mother’s counsel asked the court for a continuance because she had received a telephone message from her client. “[S]he informed me that she has recently started a new job, and she is unable to make it to court today. She asked that I convey to the court her desire to have the matter continued to another day. [¶] If the court is not inclined to grant that request, I am authorized to – the last communication I had with my client is that she wanted me to proceed with the hearing, so I will do so, and I am prepared to do so.” The court denied the continuance. “It’s not in the best interest to continue this anymore. . . . And the phone call that she just started a job, I’m not sure how much credibility that carries.”

At the end of the testimony, the mother’s counsel renewed her request for a continuance. The mother was “very much interested in testifying. . . . She does have a new job, and she was quite fearful that she would be fired if she missed today” The court responded, “We do have her statements in the reports. . . . I can’t see what she would add except of the emotion of what it is. But she’s not here. The little kids are here. Everybody else is here. So [there] really is no good cause legally for me to continue.”

Dylan, who was seven years old at the time of the hearing, testified he enjoyed visits with his mom, which occurred every Sunday. He liked playing and

spending time with her. It was easy for him to talk to her; they talked about school and baseball and scouts. He liked living at home with his mom, and he was sad when he was removed from her care, “but now I’m kind of happy because that was a long time ago.” When asked where he would like to live, he responded, “I don’t know which one to answer.” If he couldn’t live with his mother, he would like to “just . . . once go to her house on Saturday and spend the night and then go to the Chucky Cheeses and then we’d go back to our aunt’s house.” Dylan liked living with his aunt and uncle. They took good care of him when he was sick, and they took him to scouts and baseball. Aunt Judy cooked dinner every night, got him ready for bed every night, and got him to school every day. He stated, “I want to live with my mom and with my aunt at the same time.”

Lana, who was five years old at the time of the hearing, testified she had fun during her visits with her mother at the park and would like to see her mother more often. It made her feel good when her mother told her that she loves her. If she had a choice, however, she would like to live at Aunt Judy’s.

The social worker testified he had talked to the two older children about adoption; both of them were ambivalent, saying they could live contentedly with their parents or with their aunt and uncle. He did not feel it would be detrimental for the children not to have continued contact with their parents because “they’ve already shown me how they can adjust.”

The juvenile court found the children adoptable and acknowledged the parents’ regular visitation. But Judy and Herb had been the ones to care for the children. “[They] have cared for Dylan and Lana for approximately 46 months in the last five years, and Daniel has resided with them all but two and a half months of his life. . . . [¶][A]s far as guardianship [is concerned,] I think the law is clear that adoption is the permanent plan approved by the Legislature. They’ve been guardians already.

This has got to end.” The court found the parental relationship did not outweigh the benefits of adoption and terminated parental rights.

DISCUSSION

The parents contend the juvenile court erred in failing to find their relationship with the children outweighed the benefits of adoption. They argue the children are strongly bonded to them, as demonstrated by the positive, loving visits over the past five years. We find substantial evidence supports the juvenile court’s determination.

At a permanent plan selection hearing, the juvenile court will ordinarily terminate parental rights if it finds by clear and convincing evidence that a child is adoptable. The termination of parental rights to an adoptable child can be avoided, however, if the court finds “a compelling reason for determining that termination would be detrimental to the child” due to at least one of several statutorily-described circumstances. (§ 366.26, subds. (c)(1)(B)(i)-(iv).) The so-called beneficial relationship exception describes circumstances where “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) In order to prove that the benefit exception applies, the parents must overcome the strong statutory presumption in favor of adoption and show that the relationships between them and the children are so beneficial that they render the termination of parental rights detrimental to the children. (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80-81.)

Here, there is no doubt that the parents and the children share a beneficial, loving relationship. But the question is whether the severance of the relationship would be so detrimental that adoption should be avoided. The children have been removed from the parents twice in five years. The parents have never demonstrated that they have resolved their substance abuse problems. They are not in a position to have the children

returned to them now, and there are no indications the situation will change in the future. Judy and Herb, on the other hand, have provided a consistent and stable home for the children for most of their lives. The children were happy and thriving in their home and were not opposed to remaining there.

It is not the role of this court to reweigh the evidence or substitute our judgment for that of the juvenile court. “Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.) The juvenile court was entitled to infer that these children would benefit more from the permanence and stability of adoption than the continuance of their relationship with the parents.

The parents cite cases where the denial of the beneficial relationship exception has been reversed on appeal. All of the cases are distinguishable from this one.

In *In re Jerome D.* (2000) 84 Cal.App.4th 1200, the court reversed the termination of parental rights because the evidence did not support the finding of adoptability or the inapplicability of the beneficial relationship exception. Furthermore, the child had lived with his mother for the first six and one-half years of his life and was unhappy with his prospective adoptive parent. In *In re Amber M.* (2002) 103 Cal.App.4th 681, a bonding study, the children’s therapists, and the court-appointed special advocate all provided strong evidence that the relationship between the mother and her children “clearly outweigh[ed] the benefit of adoption.” (*Id.* at p. 690.) The mother “was devoted to them and did virtually all that was asked of her to regain custody.”

In re S.B. (2008) 164 Cal.App.4th 289 is a closer case. There, a young girl was made a dependent of the juvenile court due to her parents’ substance abuse. The father fully complied with his case plan, including maintaining sobriety and visiting his

daughter three days a week. But he suffered from physical and emotional injuries incurred during his service in the Vietnam War and was not able to care for her full time. The juvenile court found the father maintained frequent and loving contact with his daughter and they had “an emotionally significant relationship.” But it found the relationship was not “parental” because the child looked to her grandmother, with whom she lived, for day-to-day nurturing and stability; accordingly, it found the beneficial relationship exception did not apply and terminated parental rights. The appellate court reversed, holding that the beneficial relationship exception did not require day-to-day contact between the parent and child or that the child’s primary attachment be to the parent. “[The father] maintained a parental relationship with [his daughter] through consistent contact and visitation. His devotion to [her] was constant, as evinced by his full compliance with his case plan and continued efforts to regain his physical and psychological health. The record shows [the daughter] loved her father, wanted their relationship to continue and derived some measure of benefit from his visits. Based on this record, the only reasonable inference is that [the daughter] would be greatly harmed by the loss of her significant, positive relationship with [the father].” (*Id.* at pp. 300-301.)

Here, the parents have not demonstrated the devotion to their children that the father did in *S.B.* They have not complied with their case plans or maintained such frequent contact. And, unlike *S.B.*, there is strong evidence here that the children will benefit greatly from being adopted by Judy and Herb.

The mother contends her due process rights were violated when the juvenile court denied her request for a continuance. In juvenile dependency matters, “continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance.” (Welf. & Inst. Code, § 352, subd. (a).)

In denying the continuance, the juvenile court considered that fact that the children's permanent plan selection hearings had been continued repeatedly for months. It also evaluated the credibility of the mother's excuse and the lack of necessity for her testimony and exercised its discretion in favor of proceeding. The mother has not demonstrated any prejudice from her inability to testify. There was no abuse of discretion. (See *In re Elijah V.* (2005) 127 Cal.App.4th 576, 585.)

DISPOSITION

The judgment is affirmed.

SILLS, P. J.

WE CONCUR:

BEDSWORTH, J.

O'LEARY, J.